

AMENDED IN ASSEMBLY JUNE 27, 2003

AMENDED IN ASSEMBLY JUNE 19, 2003

AMENDED IN SENATE MAY 8, 2003

SENATE BILL

No. 298

Introduced by Senator Dunn

February 19, 2003

An act to amend Sections 3050 and 3066 of, and to add Section 3065.2 to, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 298, as amended, Dunn. Vehicles: New Motor Vehicle Board: powers and duties.

(1) Existing law requires the New Motor Vehicle Board to consider any matter submitted by any person concerning the activities or practices of any person applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative. After that consideration, the board is authorized, among other things, to undertake to mediate, arbitrate, or otherwise resolve any honest difference of opinion or viewpoint existing between any member of the public and any new motor vehicle dealer, manufacturer, manufacturer branch, distributor branch, or representative.

This bill would recast the authority of the board as to undertaking the above mediation, arbitration, or resolution practices to specify that the authority applies to a retail consumer of goods or services furnished by a new motor vehicle dealer, rather than any member of the public, and a new motor vehicle dealer, manufacturer, manufacturer branch, distributor branch, or representative.

(2) Existing law makes it unlawful for the holder of a dealer's license and a licensed manufacturer, manufacturer branch, distributor, or distributor branch to engage in certain conduct.

This bill would authorize a franchisee, as defined, to file a protest with the board protesting an act or omission on the part of its franchisor, as defined, that alleges a violation of the provisions described above. ~~The bill would provide that if~~ If the board finds a violation and sustains the protest, *the bill would prohibit the board from awarding damages and would require the franchisor* ~~would be required~~ to immediately discontinue the act or correct the omission, or both. The bill would make corresponding changes.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3050 of the Vehicle Code is amended to
2 read:

3 3050. The board shall do all of the following:

4 (a) Adopt rules and regulations in accordance with Chapter 3.5
5 (commencing with Section 11340) of Part 1 of Division 3 of Title
6 2 of the Government Code governing those matters that are
7 specifically committed to its jurisdiction.

8 (b) Hear and determine, within the limitations and in
9 accordance with the procedure provided, an appeal presented by
10 an applicant for, or holder of, a license as a new motor vehicle
11 dealer, manufacturer, manufacturer branch, distributor, distributor
12 branch, or representative when the applicant or licensee submits
13 an appeal provided for in this chapter from a decision arising out
14 of the department.

15 (c) Consider any matter submitted by a person concerning the
16 activities or practices of a person applying for or holding a license
17 as a new motor vehicle dealer, manufacturer, manufacturer
18 branch, distributor, distributor branch, or representative pursuant
19 to Chapter 4 (commencing with Section 11700) of Division 5. A
20 member of the board who is a new motor vehicle dealer may not
21 participate in, hear, comment, advise other members upon, or
22 decide any matter considered by the board pursuant to this
23 subdivision that involves a dispute between a franchisee and



franchisor. After that consideration, the board may do any one or any combination of the following:

(1) Direct the department to conduct investigation of matters that the board deems reasonable, and make a written report on the results of the investigation to the board within the time specified by the board.

(2) Undertake to mediate, arbitrate, or otherwise resolve any honest difference of opinion or viewpoint existing between a retail consumer of goods or services furnished by a new motor vehicle dealer and a new motor vehicle dealer, manufacturer, manufacturer branch, distributor branch, or representative.

(3) Order the department to exercise any and all authority or power that the department may have with respect to the issuance, renewal, refusal to renew, suspension, or revocation of the license of a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative as that license is required under Chapter 4 (commencing with Section 11700) of Division 5.

(d) Hear and decide, within the limitations and in accordance with the procedure provided, a protest presented by a franchisee pursuant to Section 3060, 3062, 3064, 3065, 3065.1, or 3065.2. A member of the board who is a new motor vehicle dealer may not participate in, hear, comment, advise other members upon, or decide, any matter involving a protest filed pursuant to Article 4 (commencing with Section 3060), unless all parties to the protest stipulate otherwise.

(e) Notwithstanding subdivisions (c) and (d), the courts have jurisdiction over all common law and statutory claims originally cognizable in the courts. For those claims, a party may initiate an action directly in any court of competent jurisdiction.

SEC. 2. Section 3065.2 is added to the Vehicle Code, to read:

3065.2. A franchisee may file a protest with the board protesting an act or omission on the part of its franchisor that alleges a violation of Section 11713.2 or 11713.3, or both. *The board may not consider a protest filed by a person other than the franchisee of the franchised business that is the subject of an alleged violation.* If the board finds that a violation~~-exist~~ exists and sustains the protest filed under this section, the franchisor shall immediately discontinue the act or correct the omission, or both. *The board may not award damages in a protest filed under this*

1 *section. No finding of fact, conclusion of law, proposed decision*
2 *of a hearing officer, or decision of the board in a protest under this*
3 *section may have any res judicata or collateral estoppel effect in*
4 *a court action for damages based upon an act or omission alleged*
5 *in the protest.*

6 SEC. 3. Section 3066 of the Vehicle Code is amended to read:

7 3066. (a) Upon receiving a notice of protest pursuant to
8 Section 3060, 3062, 3064, 3065, 3065.1, or 3065.2, the board shall
9 fix a time, which shall be within 60 days of the order, and place of
10 hearing, and shall send by registered mail a copy of the order to the
11 franchisor, the protesting franchisee, and all individuals and
12 groups which have requested notification by the board of protests
13 and decisions of the board. Except in any case involving a
14 franchisee who deals exclusively in motorcycles, the board or its
15 secretary may, upon a showing of good cause, accelerate or
16 postpone the date initially established for a hearing, but in no event
17 shall the hearing be rescheduled more than 90 days after the
18 board's initial order. For the purpose of accelerating or postponing
19 a hearing date, "good cause" includes, but is not limited to, the
20 effects upon, and any irreparable harm to, the parties or interested
21 persons or groups if the request for a change in hearing date is not
22 granted. The board, or a hearing officer designated by the board,
23 shall hear and consider the oral and documented evidence
24 introduced by the parties and other interested individuals and
25 groups, and the board shall make its decision solely on the record
26 so made. Chapter 4.5 (commencing with Section 11400) of Part 1
27 of Division 3 of Title 2 of the Government Code and Sections
28 11507.3, 11507.6, 11507.7, 11511, 11513, 11514, 11515, and
29 11517 of the Government Code apply to these proceedings.

30 (b) In any hearing on a protest filed pursuant to Section 3060
31 or 3062, the franchisor shall have the burden of proof to establish
32 that there is good cause to modify, replace, terminate, or refuse to
33 continue a franchise. The franchisee shall have the burden of proof
34 to establish that there is good cause not to enter into a franchise
35 establishing or relocating an additional motor vehicle dealership.

36 (c) In any hearing on a protest alleging a violation of, or filed
37 pursuant to, Section 3064, 3065, 3065.1, or 3065.2, the franchisee
38 shall have the burden of proof, but the franchisor has the burden
39 of proof to establish that a franchisee acted with intent to defraud

1 the franchisor where that issue is material to a protest filed
2 pursuant to Section 3065 or 3065.1.
3 (d) A member of the board who is a new motor vehicle dealer
4 may not participate in, hear, comment, or advise other members
5 upon, or decide, any matter involving a protest filed pursuant to
6 this article unless all parties to the protest stipulate otherwise.

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